

COTTONWOOD HEIGHTS

RESOLUTION NO. 2013-34

A RESOLUTION APPROVING A REIMBURSEMENT AGREEMENT WITH QUESTAR GAS COMPANY FOR ROAD RECONSTRUCTION

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met on 27 August 2013 to consider, among other things, approving a "Reimbursement Agreement" (the "*Agreement*") with Questar Gas Company ("*Questar*") whereunder Questar will reimburse the City approximately \$51,018 in connection with a future asphalt overlay by the City on the East side of 1300 East from the landscaped median triangle to Union Park Avenue within City's municipal boundaries, on the terms and conditions specified in the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto as an exhibit; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the attached Agreement with Contractor is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

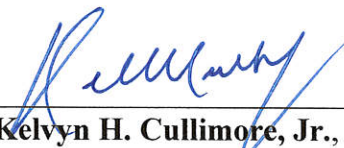
This Resolution, assigned no. 2013-34, shall take effect immediately upon passage.

PASSED AND APPROVED this 27th day of August 2013.

COTTONWOOD HEIGHTS CITY COUNCIL



By


Kelvyn H. Cullimore, Jr., Mayor


Kory Solorio, Recorder

VOTING:

Kelvyn H. Cullimore, Jr	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 27th day of August 2013.

RECORDED this 29 day of August 2013.

601954.1

Reimbursement Agreement

THIS REIMBURSEMENT AGREEMENT (this "*Agreement*") is entered into effective 30 July 2013 by the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*"), and by **QUESTAR GAS COMPANY**, a Utah corporation whose address is 333 South State Street, PO Box 45360, Salt Lake City, UT 84145-0360 ("*Questar Gas*"). City and Questar Gas may be referred to collectively as the "*Parties*" or individually as a "*Party*."

RECITALS:

A. City owns and operates a public street located within City's geographic boundaries that is known as 1300 East ("*1300 East*").

B. City heretofore has contracted with Staker & Parsons Companies ("*Contractor*") to construct certain improvements on 1300 East between the South side of the I-215 freeway and the East side of Creek Road, under City's Project No. CHC. 252 (the "*City Project*").

C. Among other work under the City Project, Contractor is required to install a two-inch asphalt overlay (the "*Overlay*") on the East side of 1300 East from the landscaped median triangle near Union Park Avenue to Creek Road (the "*Section*") during Summer 2013.

D. Questar Gas recently informed City that Questar Gas plans to install certain underground pipelines and facilities pertaining to Questar Gas's natural gas distribution system along the Section in early- or mid-2014 (the "*Questar Gas Project*"), which will require Questar Gas to repair or reinstall the Overlay upon completion of the Questar Gas Project at an anticipated cost to Questar Gas of approximately \$85,000.

E. Consequently, Questar Gas has requested City to modify the City Project via change order ("*Change Order*") with Contractor to defer the Overlay until Fall 2014 to allow the Questar Gas Project to be completed before the Overlay occurs, on the condition that Questar Gas will pay one-half of the cost of the deferred Overlay under City's Change Order with Contractor.

F. City is willing to act as requested by Questar Gas, on the terms and conditions specified in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and undertakings of the Parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

Section 1. **Change Order.** City and Contractor shall enter into the Change Order substantially in the form of the attached exhibit, whereunder (a) the Overlay on the Section will be deferred until Fall 2014, and (b) the cost of the deferred Overlay will be approximately \$102,036 (subject to asphalt oil cost adjustment and fuel surcharge as provided in the Change Order) (the "*Cost*").

Section 2. **Questar Gas Project.** This Agreement does not limit Questar Gas's responsibility to perform the Questar Gas Project in full compliance with all applicable laws, including, without limitation, Chapter 14.16, COTTONWOOD HEIGHTS CODE OF ORDINANCES (the "Code"). Without limiting the foregoing, any trench or other excavation in 1300 East performed in connection with the Questar Gas Project shall be properly backfilled, compacted, asphalted and otherwise repaired (before the Overlay) per APWA specifications and requirements of the Code. Further, to allow Contractor to timely mobilize and perform the Overlay, Questar Gas shall give City and Contractor at least 45 days' prior written notice of the completion date of the Questar Gas Project (i.e., the first date that the Overlay can be substantially commenced by Contractor).

Section 3. **Payment by Questar Gas.** Following City's receipt of Contractor's billing for the Cost, which likely will occur in Fall 2014, City shall give written notice to Questar Gas of such charge, providing copies of any back-up documentation received from Contractor. Within ten business days after Questar Gas's receipt of such written notice, Questar Gas shall pay to City one-half (50%) of the Cost charged by Contractor to City for the deferred Overlay to the Section. Based on the Change Order, Questar Gas's portion of the Cost will be \$51,018, subject to oil cost/fuel adjustments as provided in the Change Order.

Section 4. **Default; Remedies.** If either Party fails to perform any of its obligations hereunder and such conditions are not cured within ten days after written notice thereof by the non-defaulting Party, the defaulting Party shall be in default, thereby entitling the non-defaulting Party to proceed at law and in equity to enforce its rights under this Agreement. Each Party acknowledges that remedies at law may be inadequate to protect against breach or threatened breach of this Agreement and breach of this Agreement may cause irreparable harm to the other. Each Party agrees that the other may seek injunctive relief as a remedy in addition to any other remedies available at law or in equity.

Section 5. **General Provisions.**

(a) **Survival.** The Parties' respective rights and obligations hereunder, and all representations and warranties made in this Agreement, all exhibits hereto, and all certificates and documents delivered pursuant hereto, shall survive any closings contemplated by this Agreement.

(b) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective Parties hereto.

(c) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(d) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(e) Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(f) Waiver of Breach. Any waiver by either Party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

(g) Cumulative Remedies. The rights and remedies of the Parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

(h) Amendment. This Agreement may not be modified except by an instrument in writing signed by the Parties hereto.

(i) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(j) Notice. All notices provided for herein shall be in writing and shall be given by first-class mail, certified or registered, postage prepaid, addressed to the Parties at their respective addresses set forth above or at such other address(es) as may be designated by a Party from time to time in writing. Notice shall be deemed received and effective three calendar days after mailing.

(k) Time of Essence. Time is the essence of this Agreement.

(l) Costs. All costs and expenses, including attorneys' fees, incurred by each Party in conjunction with this Agreement shall be paid by the Party which has incurred such costs and expenses.

(m) Exhibits. The exhibits that are referenced herein and that are attached hereto are an integral part of this Agreement and are incorporated herein by reference.

(n) Integration Clause. There are no representations, warranties, covenants or agreements between the Parties as to the subject matter of this Agreement except as are specifically set forth in this Agreement. This Agreement contains the entire agreement between the Parties hereto pertaining to the matters that are set forth herein and supercedes all prior agreements, correspondence, memorandum, representations and understandings of the Parties related thereto. No representations have been made to induce the Parties hereto to enter into this Agreement except as set forth herein.

(o) Authority. Each individual executing this Agreement does thereby represent and warrant to any other individual so signing (and to each other entity for which another individual is signing) that the individual has been duly authorized to deliver this Agreement in the capacity and for the entity that is set forth where he signs.

DATED effective the date first written above.

CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

Linda W. Dunlavy, Recorder

By _____
Kelvyn H. Cullimore, Jr., Mayor

QUESTAR GAS:

QUESTAR GAS COMPANY
a Utah corporation

600510.1

By: _____

Its: _____

Exhibit to Reimbursement Agreement

(Attach Copy of Change Order No. 1)

SECTION 00560
CHANGE ORDER NO. 1

6/17/2013

PROJECT: "STREET IMPROVEMENT PROJECTS ALONG UNION PARK AVENUE AND 1300 EAST STREET, BETWEEN SOUTH SIDE OF I-215 FREEWAY AND EAST SIDE OF CREEK ROAD --- PROJECT # CHC.252"; for the City of Cottonwood Heights

CONTRACTOR: Staker & Parson Companies
89 West 13490 South Ste 100
Draper, Utah 84020

You are hereby requested to comply with the following changes from the contract plans and specifications.

Item No. (1)	DESCRIPTION OF CHANGES: quantities, units, prices, schedule, etc. (2)			Decrease (3)	Increase (4)
12.	Furnish, place and compact 1/2" hot mix asphalt surface course for 2-inch overlay, complete; including mix design, supplying asphalt material, placing and compacting asphalt material, and all appurtenant work				
	-91,800	s.f.	\$0.88	-\$80,784.00	\$0.00
43.	Furnish, place and compact 1/2" hot mix asphalt surface course for 2-inch overlay, eastside of 1300 East from the Triangle to Creek Road in the Fall of 2014 (see attached drawing) including mix design, supplying asphalt material, placing and compacting asphalt material, and all appurtenant work (Due to Questar work)				
	** 91,800	s.f.	\$1.02	\$0.00	\$93,636.00
44.	Mobilization				
	1	ls	\$5,000.00	\$0.00	\$5,000.00
45.	Traffic control, complete				
	1	ls	\$3,400.00	\$0.00	\$3,400.00
Total of Decreases:				-\$80,784.00	
Total of Increases:					\$102,036.00
Net contract change				\$21,252.00	

** Subject to asphalt oil cost adjustment and fuel surcharge as per contract documents.
The Bench Mark Price for asphalt oil the week of this proposal is \$563.00 per ton.
The Bench Mark Price for diesel fuel the week of this proposal is \$3.882 per gallon.

CHANGE ORDER NO. 1**6/17/2013**

PROJECT: "STREET IMPROVEMENT PROJECTS ALONG UNION PARK AVENUE AND
1300 EAST STREET, BETWEEN SOUTH SIDE OF I-215 FREEWAY AND EAST SIDE
OF CREEK ROAD --- PROJECT # CHC.252"; for the City of Cottonwood Heights

CONTRACTOR: Staker & Parson Companies
89 West 13490 South Ste 100
Draper, Utah 84020

You are hereby requested to comply with the following changes from the contract plans and specifications.

Item No.	DESCRIPTION OF CHANGES: quantities, units, prices, schedule, etc.	Decrease	Increase
(1)	(2)	(3)	(4)

The sum of \$ 21,252.00 is added to the total contract price. The total adjusted contract price to date is \$1,252,857.00.

This document shall become an amendment to the contract and all provisions of the contract will apply hereby.

Accepted by
Contractor:

Date:

Staker & Parson Companies

Recommended
by Inspector:

Date:

Inspector

Recommended
by Engineer:

Date:

GILSON ENGINEERING, INC.

Approved
by Owner:

Date:

Cottonwood Heights